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REHABILITATION, HOUSING & BACKWARD CLASSES. DEPARTMENT

E.P. No. 50 of 57.

B BRANCH

Subject:— Evacuee Property

Administration of the

Bar Asst
Sec
23/3/59

'B' Class
'K' Regd

49 Copied out from the original file.

File No.

Edd. Secrt. Slip. 24 A

D.O.NO.R.141/30655-B.
Rehabilitation Department.
Bombay Castle, 1st Nov. 1949.

Dear Deshpande,

Please refer to your D.O. NO. P.OLL. dt. 26/10/49 The Bombay Evacuees (Administration of Property) Act, 1949, has now been superseded by the Administration of Evacuee Property Ordinance, 1949 issued by the Govt. of India. A copy of the new ordinance and Secret instructions received from the Government of India are being sent to you separately. Action should now be taken under this Ordinance.

Yours Sincerdly,

Sd/-

To

M.K. DESHPANDE Esqr.,
Co
Collector of Surat.

Rehabilitation Department.
"B" Br.

The copies of the secret notes on new Evacuee Property Ordinance have been circulated to all D.C.E.P.'s This may therefore be filed.

Id/-

The original note has been returned to J.S.

Id/-

HSS.
14/5

No. 14 (57)Cus/49
Government of India.
Ministry of Rehabilitation.

New Delhi, Dated the 18th October 49.

To

1. The Chief Secretaries of all Provinces (except Assam and West Bengal)

2. The Chief Commissioners of all Centrally Administered Areas.

3. The Chief Secretaries of all States Unions.*

Vindhya Pradesh
Madhyabharat
Rajasthan
Saurashtra
Travancore and Cochin
Pepsu.

Sir,

I am directed to state that the new Central Ordinance No. XXVII of 1949 (Administration of Evacuee Property Ordinance,1949) has been promulgated today, the 18th October 1949.

I am herewith enclosing a note to elucidate its working for your information and guidance.

Yours faithfully,

Sd/- (Parshotam Sarup)
Under Secretary to the Govt. of India.

Copy together with a copy of enclosure to the Ministry of States for information.

copy also to;-

1) Custodian General.

2) Custodian, Delhi.

3) Custodian, Ajmer.

ss.
1/5

SECRET

MINISTRY OF REHABILITATION.

NOTES ON NEW EVACUEE PROPERTY ORDINANCE.

These notes have been prepared to enable the officers applying the law to understand t e background, so that they may avoid mistakes and pitfalls, as far as possible.

2. The more important provisions are the difinition of "evacuee" , intending evacuee", and "evacuee property". As will be noticed the f definition of evacuee has been left unchanged so far as the first and second clauses are concerned. The intention, however, is that a person who goes to any place other than Pakistan is not to be treated as an evacuee, but if a person goes to Pakistan via some other country he is a evacuee. Persons going on pilgrimage or even to foreign countries on acc nt of disturbances are not to be treated as evacuees, unless from those countries they go on to Pakistan. Similarly it is not the intention to apply the law to foreign nationals, If, however, a person while in forei gn country endeavours to liquidate his assets both movable and immovable in the Indian Dominion with a view to migrate to Pakistan either directly or indirectly his property should be declared evacuee property ..

3. The third clause of the definition of evacuee has been substantially amended in the present Ofdinance. Only those persons are to be treated as evacuees who after the 14th May of August, 1947 acquire by way of allotment or by means of illegal occupation or other illegal means, any right to interest in, or benefit from any property which is treated as evacuee or abandoned property. In other words, if a relation of a person has so acquired the property in Pakistan, the person in India does not necessarily become thereby an evacuee. Interest must also be acquired either by way of allotment or through some illegal means. Purchase of property, therefore, would not be an acquisition of an interest by illeg- al means, but if a purchase has been made at a very low price power has been taken to remedy t e inequity under the section 23 of the new Ordinance. It is obvious t at if a person acquire some interest by purchase in Pakistan he might come under the new clause 19 as an intending evacuee, if t he transfers any assets from India to Pakistan for the purchase .

INTENDING EVACUEE.

This is a new clause under which persons who have transferr t eir assets wholly or in part, or have acquired either personally or

or through his dependent relative any right to interest in or benefit from any evacuee or abandoned property in Pakistan or by the execution of any document or any other document in writing purporting to effect conveyance of the whole or part of the property in India with effect ~~xxxxxxx~~ of the whole or property in Pakistan, can be declared an intending evacuee. It will be noticed that if a person himself has acquired any right to, or interest in or benefit from any evacuee or abandone property by way of allotment of any other illegal means, he becomes an evacuee straightway, but if he acquires such interest in any other way he is only classed as an intending evacuee. Dependent relatives have also been defined and include only those members who are wholly dependent upon the earnings of the person concerned, or who share with him in the ordinary expences of the household to which they jointly belong, or who own property, or carry on ~~xxxxxx~~ business jointly. To illustrate, if a grown up son who is not dependent upon his father, goes to Pakistan the father would not thereby become an intending evacuee. It will alsobe noticed that a person becomes an intending evacuee only if he has done any of the three things provided in the Ordinance, and no others. If for example, a person has sent all his family members to Pakistan but he himself stays on in India he would not thereby become an evacuee, unless he falls under the mischief of any of the clauses of the new Ordinance. For example, that person may ~~xxxxx~~ remitted unnecessarily large sums to Pakistan. In that case he becomes an intending evacuee, if he has been transferring sums after the 15th day of August, 1947, but before coming into force of this Ordinance. If the transfer taken place after the coming into force of this Ordinance then the property of such a person becomes "evacuee property" under the new definition of evacuee property. The person himself should not be declared as an evacuee. This is important.

EVACUEE PROPERTY.

5. The new definition of evacuee property not only includes property of evacuees as defined under Section 2(d).(i) to (iii) of the Ordinance but also the property, a person may have obtained from any evacuee after the 14th Day of August,1947, by any mode of transfer, unless such a transfer has been confirmed by the Custodian. This covers sales by intending evacuees in the past who have since migrated to Pakistan andbecome evacuees. All such transactions have to be reviewed by the Custodian. and if on review he is satisfied that the transactions are really benami or transfers to relatives left in ^ India, he would be at liberty not to confirm. If the transfer is, however, a genuine one for valuable and adequate consideration, he may confirm the transaction. It is possible that some purchasers in India may suffer under this law, but this is necessary if "benami" transactions are to be stoped. The sufferers in these cases will be mostly Hindus and Sikhs. It will be noticed that evacuee property includes also property held in trust, or a beneficiary,or in any other capacity, by the evacuee.

6. The most significant addition to the definition, however, is under sub-clause (2) of clause 2(f). It covers the property of all those persons who after the promulgation of the Ordinance either transfer their assets wholly or in part, or acquire either personally a relative any right to, interest in or benefit from or through any evacuee or abandoned property in Pakistan, or against whom documentary proof is available of intending to exchange the property with property in Pakistan. It will thus be clear that while a person is to be treated as an 'intending evacuee' if he does any of the three things mentioned in the Ordinance before coming into force of the Ordinance, the property of such a persons becomes evacuee property, if he doesmnt the same thing after the passing of the Ordinance. The person is not declared an evacuee, but all his property becomes evacuee. property. This distinction is important and should be borne in mind when applying the law.

7. The property of evacuees which is exempted, has also been specially safeguarded. It covers ornaments, wearing apparel, cooking utensils, and other household effects in the immediate possession of the evacuee. The intention is also to allow a certain amount of cash to the evacuee. It is obvious that if a [illegible] to take any large sums of money, it cannot be permitted, but a reasonable amount should be permitted to thus be taken. It will be clear from the definition that articles deposited for safe custody in banks or safe deposit vaults are to be treated as evacuee property, because they are not in the immediate possession of the evacuee.

8. The properties of joint stock companies are exempt under an agreement reached with Pakistan, and these properties have been specifically exempted by the Ordinance. In addition cash deposits in banks are not to be treated as evacuee property. The idea is not to attach current accounts or even long term cash deposits in banks. Securities, shares or other valuables left in the safe custody of the banks, however, are to be treated as evacuee property and cannot be permitted to be taken away by the evacuee without the prior consent of the Custodian. Whether this permission is to be given would depend upon any Inter-Dominion Agreement that may be reached on the subject. For the present nothing is being allowed to move from Pakistan and nothing would, therefore, be allowed to move from India till an agreement is reached.

9. Questions of shares and securities as well as of insurance policies have been under the consideration of the Government of India. It has been decided that if a concern has been taken over by the Custodian because the majority of the shareholders are evacuees and have gone to Pakistan the shares of such companies, if it is a public limited

company, cannot obviously be allowed to be sold, because such concerns even under the Karachi Agreement would be kept for the rehabilitation of refugees for 5 years. It is necessary, therefore, for Custodians to make out a list of such concerns, if any, and intimate them to the Stock Exchanges in the country so that they may not deal with the shares of these companies. Such cases, are, however, likely to be few, and perhaps their shares will not be quoted on the Stock exchange. Even so, it is best to communicate with the Exchanges and to notify that the transfer of the shares of these concerns requires prior consent of the Custodian. A list of such concerns should also be sent to the Government of India, Ministry of Rehabilitation and the Custodian General. The shares, securities etc. xxxx left in the custody of banks of safe deposit vaults are evacuee.also evacuee property and cannot be allowed to be taken out. It is advisable for Custodians to ask the Banks and the safe deposit companies to give them a list of the articles or packages left in safe deposit by evacuees every six months, to check up that nothing is in fact moved without the Custodian's permission.

Except as stated above, there is no intention whatsoever of imposing any restrictions on the transfer or sale of securities shares, or insurance policies, even though technically under the law they may be evacuee property. There should, therefore, be no interference with shares, securities or insurance policies, except to the very limited extent, already indicated. Income-tax of cou will have to be deducted from the divident payable, to the owners of shares and securities now in Pakistan according to any law or agreement that may exist . Where some of the shareholders of joint property or a private registered firm have gone to Pakistan and others remain in India, the general policy, should be to ensure the continuous working of the concern, so that production trade do n ot suffer. The shareholders in India, should, as far as possible, be allowed to continue the working of the firm or the concern as long as the Custodian ensures that he ignores

due to the evacuee is regularly paid to the Custodian, the management is adequate and satisfactory, and the property is neither wasted nor frittered away. The action to be taken in each case would depend upon the circumstances of each case and it is obviously impossible to give any detailed directions.

11. Where the joint property consists ofone house only the occupant should not be evicted, but the Custodian may ask him to pay the rent for the share due to the evacuee to the Custodian.

12. It will be noticed that trusts have now been specifically legislated for. Waqf-ul-aulad is to be treated in the same way as the property of an individual because it is waqf only in name. In other cases the crucial test to be applied is that of beneficiaries. If the beneficiaries have gone to Pakistan, the trust becomes evacuee property, If the beneficiaries are in India, but the trustees have gone, the Custodian may manage the trust pending the appointment of fresh trustees, but the money may be spent for the benefit of the beneficiaries. If some of the beneficiaries have gone, obviously their share only will become evacuee property. All trusts created after Ist March, 1947, have to be specially scrutinised.

CHANGES IN PROCEDURE.

13. There is an important change in the procedure to be followed in future. A notice has to be served in writing in the beginning of any proceedings. Investigations are to be proceeded after the notice, and only if the Custodian feels after investigation that the property is an evacuee property. The property is attached immediately the notice is served, and the owner cannot thereafter dispose it of legally. The position in case of the property of 'intending evacuees' is somewhat different. The serving of the notice does not automatically mean

attachment of the property, and officers should, therefwe, be carefull to attach the property under sub-clause (2) of Section 19 of the Ordinance in cases of intending evacuees.

The notice may be served in any manner prescribed. In the case of those who have already gone to Pakistan the notice may be served either by beat of drum, or pasting a copy of the notice on the property, or in any other manner that may be considered fair and proper by the Custodian.

14. It will also be noticeed that the property will vest in future in the Custodian only after it has been declared evacuee property.

15. Special powers have been taken for the Custodian to require banks to furnish information in respect of any remittances made by any person after the 14th day of August, 1947. This power is meant to be utilised to locate "intending evacuees". It will be noticed that remitttances for trade purposes and reasonable amounts of money sent for family reasns are to be exempt. What is reasonable must depend upon the circumstances of each case. If, for example, a father sends large sums of money to his grown up son, who never depended upoh him before he left for Pakistan, it will be a prima facie case falling under the Ordinance and will require examination. On the other hand a small present sent to daughter-in-law, even in cash, would not make the person an evacuee.

16. Power has alsobeen taken under which any person may be required to disclose any information, including the furnishing of returns of documents and accounts relating to any property, inspite of anything to the contrary in any other law for the time being in force. Power has specially been taken to obtain information, ~~including the furnishing of returns of documents and accounts relating to any property, inspite of~~ available to income tax authorities. Kindly see in this connection section 54 of the Ordinance.

17. It will be noticed that evacuee property is exempt from

ttachment under section 17 of the Ordinance exempt Crucial date is 14th August, 1947, as in other cases. This implies an obligation to review all transfers taking place after 14th August, 1947, in regard to property which may become evacuee property. In fact it would be a good idea if the Custodians scrutinise all transfers which are registered by the Registrars after the 14th August, 1947, to see if any of them pertain to properties which should really be treated as evacuee property.

PROPERTY OF INTENDING EVACUEES.

18. In respect of such property the Custodian has to watch that the property is preserved. He has a right to inspect the books of accounts and other documents and to ask for the such returns and information as may be necessary. He has also a right to pass orders for the preservation of the property. For example, he may forbid cutting down of trees, or order the repair of houses, or keeping in good order the machinery of any factory. While remittances may be allowed to Pakistan for trade purposes or for family reasons (the amounts have to be reasonable), other remittances are likely to make the property evacuee property under the present law.

19. If the intending evacuee violates any of the orders of the Custodian, the property is likely to be declared evacuee property under paragraph 22 of the Ordinance.

APPEALS.

20. The next important change in the law is with regard to appeals. The present procedure is to continue in regard to cases falling under Section 2(d) (i) and (ii). These are cases of persons who have already migrated to Pakistan or are residing there. An appeal in such cases would lie from the order of the Deputy Custodians to the Custodian, but if in any particular case the Custodian himself has decided the case initially, an appeal will lie to the Custodian General, who

who is a retired judge of the High Court of East Punjab. Where an appeal lies, however, from an order under Section 2(f)(iii) declaring a person an evacuee, an appeal will lie from the order of the Custodian or Deputy Custodian to District judges especially designated by the Provincial Governments. The Provincial Governments are expected to select to these District Judges in consultation with the Custodian-General. The decision of the District Judges will be final. The Custodian General will however have revisionary powers. Where the Custodian-General holds that a person who has been declared an evacuee by the District Judge is not an evacuee, his orders will be final, but when the Custodian-General feels that a person who is an evacuee, but has wrongly been declared by the District Judge to be non-evacuee, he will make reference to the High Court of the Province concerned, and the case will be heard and decided by a Bench of the High Court consisting of two judges.

21. In case of intending evacuees appeal lies from the declaration of a person as an intending evacuee to the Custodian or Custodian General as the case may be, and not to the District Judge. Where a property of a intending evacuee, is however, declared evacuee property by the Custodian under Section 23 of the Ordinance (in other words because the intending evacuee has violated orders given by the Custodian under (21(c) or (d)) an appeal will lie to the District Judge. If, however, an intending evacuee is declared an evacuee for other reasons, (he may migrate to Pakistan), the apppeal would be governed by the circumstances of each case.

22. Where the property is declared "evacuee property" under section 2(f) (2), an appeal will lie to the designated District Judge.

23. It is necessary for the Custodians to note the distinction made in the matter of appeals and to prepare their cases carefully.

TRANSFERS BY EVACUEES AND INTENDING EVACUEES.

24. It will be noticed that section 26 of the old Ordinance has not been included in the new one. The power to forbid sales of immovable property in any specified area has been deliberately given up. Instead Section 23 of/the old Ordinance has been redrafted and

covers by section 27 of the new Ordinance. It will be noticed from that section that no transfer of any right or interest in any property made in any manner whatsoever after the 14th day of August 1947, by or on behalf of any evacuee or by or on behalf of a person who has become an evacuee after the date of the transfer, shall be effective so as to acquire a right etc. unless it is confirmed by the Custodian. It is felt that this should cover cases of evacuees or intending evacuees as well as cases of persons who may want to sell their property in India in anticipation of their becoming an evacuee. The purchasers in such cases will purchase the property at their own risk. It is realised that the sufferers in such cases may be Indian citizens, but if a citizen takes risks it is his own responsibility. Under Section 30 as it stands, if a person buys a property of one who migrates to Pakistan after selling his property, the Custodian will have the right to review the transaction and may refuse to confirm it. The provisions of this section should be made widely known, and it is suggested that Society may invariably bring the provisions of this section to the notice of the purchasers.

CUSTODIAN GENERAL:

28. Another very important provision of the new Ordinance is the appointment of a Custodian General. In this connection reference is invited to Section 5 of the Ordinance Shri Acharu Ram, a retired Judge of the East Punjab High Court, has been appointed Custodian General by the Government of India. Attention is invited to some of the provisions relating to the Custodian General which are incorporated as in section 24, 25, 27 and 28 of the Ordinance. Attention is also invited to section 29 and 31 of the Ordinance. The intention of the Central Government is to entrust the working of the law generally to the supervision of the Custodian General.

29. While [illegible] for evacuees or intending evacuees it will be noticed that there is no safeguard in the

in the case of those persons whose presumptive heirs have gone to Pakistan. If such a person who dies and any of his property passes to the presumptive heir in Pakistan, that portion passed of the property becomes evacuee property. It would be wise, therefore, on the part of Custodian and Deputy Custodians to keep a list of the richer persons of their district whose presumptive heirs have gone to Pakistan. Custodians will have to keep watch to see whether any of these persons are remitting money or in any other way transferring their assets to Pakistan. The cases of all such persons who may be suspected, should be examined to see whether they fall under the category of "intending evacuees" in any way. Investigations must, however, be delicately and discreetly conducted so as to give no cause for complaint. Banks, post offices and others may have to be consulted and information obtained from them. This will require considerable tact, skill and judgment, and the work should be entrusted to experienced hands. At the same time it is necessary to ensure that persons committing such breaches of the law are not allowed to escape.

27. The permit system is intimately connected with the working of the evacuee property Ordinance, because the real intention of the permit system was to stop the one way traffic of Muslims, who after seizing all to the property in Pakistan were wanting to come back to India to regain hold on their pre property here. There should, therefore, be close liaison between the authority granting permits, or "no objection" certificates, and the Custodian. Copies of all pr permits issued are invariably endorsed by the High Commissioner or the Deputy High Commissioner to the District Superintendent of Police. Liaison, has therefore, to be maintained with the District Superintendent of Police. It will be noticed, that temporary permits are granted only to Pakistan nationals who come to India temporarily and such persons cannot simultaneously claim Indian Nationality. Persons going to Pakistan temporarily, who wish to return to India, are granted "no objection to return" certificates by the District Magistrate in India. The usual period allowed

for the currency of a 'no objection certificate' is about two months. Careful watch, has therefore, to be kept to see that persons who go on no objection to return certificate return during the period of the currency of the currency certificate. If they do not, their cases have to be investigated to see whether they fall under the category of Evacuees.

28. Paras 26 and 27 are merely explanatory. Whether a person is an evacuee or not will depend entirely upon the facts of each case.

Sd/- V.D.DANIYAGI.

RSS/11/3.

SHARES AND SECURITIES.

Position in regard to- under the Bombay Evacuees (Administration of Property), Act, 1949.

GOVERNMENT OF BOMBAY.
Rehabilitation department.
Circular no. R.141-B,
Bombay Castle, 20th August 1949

CIRCULAR OF GOVERNMENT:

Under Section 2 of the Bombay Evacuees(Administration of Property) Act, 1949, as amended by the Bombay Evacuees(Administrati of Property ((Amendment) Ordinance, 1949m shares and securities are evacuee property and as such s vest in the Custodian of Evacuee Property. All banks in the Province of Bombay are, therefore, requested to note carefully that share scrips, bonds etc. left in their safe custody by evacuees should not be disposed of, returned or sent to the owners without the permission of the Custodian of Evacuee Property, Yatcht Club, Apollo Bunder, Bombay.

By order of the Governmer of Bombay,

Sd/-

For Deputy Secretary to the Governmentof Bombay,
Rehabilitation Department.

To

The Custodian of Evacuee Property, Bombay.

The Manager, Reserve Bank of India(By letter),

All Banks in the Province of Bombay.

HSS.11/5

Copy ofletter No. II(138)/49-IDC, dated the 5th November 1949, from the Officer on Special Duty, Government of India, Ministry of Rehabilitation.

I am directed to state that press reports appearing from time to time have indicated that cash deposits of evacuees in banks have been taken over by Custodians in India. These press reports have resulted in considerable propaganda in Pakistan and the Govt. of Pakistan have also referred the matter to the Govt. of India as contrary to Inter Dominion Agreement and Evacuee Law. The Govt. of India are not aware whether the press reports on the subject of freezing of cash deposits of evacuees by Custodians are authentic. It is, however, considered necessary to bring to the notice of all Custodians that cash deposits in banks are not evacuee property under the Evacuee Property Law and should not be attached as such. There is, however, no objections to attaching cash deposits which are of the nature of sale proceeds of securities and movable property etc. of evacuees, deposited in banks or elsewhere. Such proceeds of evacuee property will continue to vest in the Custodian.....

CONFIDENTIAL.

NO. R.141/32446-B.
Rehabilitation Department.
Bombay Castle, (Bombay No.1)
14th November 1949.

Forwarded with compliments to:-

The Commissioners of Divisions,
The Custodian of Evacuee Property,
The Additional Custodian of Evacuee Property, Bombay,
All Other Collectors and Deputy Custodians of
Evacuee Property

for information and guidance.

By order of the Governor of Bombay,

Sd/-
(D.R.PINGE).
Assistant Secretary to the Govt. of Bombay
Rehabilitation Department.

HSS.11/5

Below advance copy of Government notification No.R.141-B, dated the 31st October 1949.

CONFIDENTIAL

No.R.141-B.
Rehabilitation Department,
Bombay Castle, 1st November 1949.

Forwarded with compliments to:

The Commissioners of Divisions,
All Collectors,
for information and guidance.

2. The appointment of all Collectors (excepting the Collector of Bombay) as Deputy Custodians and all Mamlatdars and Mahalkaris as Assistant Custodians, is for the Province of Bombay but jurisdiction of each of these Officers will be conterminous with their present jurisdiction. All Collectors (excepting Collector of Bombay) will, therefore, exercise their powers under the Ordinance within their Districts and all Mamlatdars and Mahalkaris within the Talukas and Mahals respectively. Government notification specifying the jurisdiction of each Officer will be issued shortly.

3. The Bombay Evacuees (Administration of Property) Act, 1949, was repealed by the Administration of Evacuee Property Ordinance, 1949 (Ordinance No.XXVII of 1949) issued by the Government of India, on 18th October 1949 and all notifications and orders issued under the Bombay Act on or after 18th October 1949 are therefore invalid. All Collectors should review the orders and notifications issued by them under the Bombay Act on or after 18th October 1949 and issue fresh notifications and orders under corresponding provisions of the Government of India Ordinance so as to validate the action taken by them.

By order of the Governor of Bombay,

Sd/-(D.R.PINGE)
Assistant Secretary to the Government of Bombay,
Rehabilitation Department.

ss.29/5